STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
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March 30, 2000

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Washington Utilities and Transportation Commission's Comments in Response to MCI WorldCom, Inc.'s Petition for Declaratory Order, CC Docket 00-45.

Dear Ms. Salas:

Pursuant to the Commission's Notice, DA 00-592, issued on March 16, 2000, please find an original and eight copies of the Washington Utilities and Transportation Commission's comments. Please file-stamp one copy of this petition and return it to me in the enclosed envelope for our file. Thank you for your courtesies.

Very truly yours,

Carole J. Washburn

Carole Washburn
Executive Secretary

Enc.
cc: Janice M. Myles
ITS

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI WorldCom, Inc.'s Petition for	)	
Declaratory Ruling Concerning a	)	CC Docket No. 00-45
Requesting Carrier's Ability To Adopt	)	
Previously Approved Interconnection	)	
Agreements Under Section 252(i) of the	)	
Communications Act of 1934, as amended	)	
	)	

COMMENTS OF THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I. Introduction and Summary

The Washington Utilities and Transportation Commission (WUTC) submits these comments in response to the Federal Communications Commission's (FCC) notice for comments regarding the petition for declaratory ruling filed by MCI WorldCom, Inc. (MCI WorldCom) on March 7, 2000.

MCI WorldCom's petition seeks a declaratory ruling by the FCC regarding a requesting carrier's ability to adopt previously approved interconnection agreements under section 252(i) of the Telecommunications Act of 1996. *See* 47. U.S.C. § 252(i). Specifically, MCI WorldCom requests the FCC to declare that:

(1) A requesting carrier's right under section 252(i) of the Act and section 51.809(a) of the FCC's rules to effectively adopt interconnection agreements previously approved by a state commission is not subject to state commission approval;

(2) A requesting carrier's adoption is effective on the date of notice of adoption (Notice of Adoption) to the incumbent local exchange carrier (ILEC);

(3) When an ILEC challenges an adoption pursuant to FCC Rule 809(b), it only can be excused from complying with the adopted terms when it promptly carries its burden of proving one of the following: 1) that the costs of providing interconnection to the requesting carrier are greater than the costs of providing it

to the carrier that originally negotiated the agreement; or 2) that the proposed adoption is technically infeasible; or, in the "pick and choose" context, that the carrier has failed to adopt legitimately related terms and conditions. 47 C.F.R. § 51.809(b);

(4) Unless a state commission affirmatively determines that an ILEC has satisfied its burden of proof with respect to the criteria concerning cost and/or technical feasibility set forth in section 51.809(b), or with respect to claims of legitimately related terms, the effective date of the agreement is retroactive to the date of the Notice of Adoption;

(5) When an ILEC raises claims of increased costs or technical feasibility pursuant to section 51.809(b), or claims regarding legitimately related terms, state commissions must establish an expedited process for a determination on the ILEC's showing; and

(6) During the pendency of such claims, an ILEC must honor the adoption of terms other than those being challenged under the rubric of increased cost, technical unfeasibility or an absence of legitimately related terms.

The WUTC believes that the FCC should decline to declare that state commission approval is not required when a carrier adopts a previously approved agreement. At a minimum, requesting carriers should notify the state commission when they adopt a previously approved interconnection agreement in its entirety. The WUTC comments are set forth fully below.

II. Comments

On June 15, 1999, a group of competitive local exchange companies (CLECs) jointly filed a petition with the WUTC, asking for a declaratory order or an interpretive and policy statement regarding a competing carrier's ability to adopt a previously approved interconnection agreement or arrangements under section 252(i) and section 51.809 of the FCC's rules. After considering comments from interested parties, the WUTC issued an Interpretive and Policy Statement on November 30, 1999.[1] The WUTC has addressed some of the issues raised by MCI WorldCom's petition in its Interpretive and Policy statement.

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[1] *In the Matter of the Implementation of Section 252(i) of the Telecommunications Act of 1996*, Interpretive and Policy Statement, Docket No. UT-990355 (Nov. 30, 1999). The Interpretive and Policy Statement is available on the WUTC's web page at www.wutc.wa.gov.

1. MCI WorldCom's Request that Adopted Agreements Are Not Subject to State Commission Approval

The WUTC believes that carriers are required by section 252(e) of the Act to submit all interconnection agreements to state commissions for approval. 47 U.S.C. § 252(e)(1). Therefore, the requirement for state commission approval applies to negotiated agreements, arbitrated agreements, agreements that contain both negotiated and arbitrated provisions, and agreements that are the result of a carrier choosing arrangements from more than one commission-approved agreement pursuant to section 252(i).

The WUTC believes that the FCC should consider the differences between an agreement that is the result of a CLEC adopting a previously approved agreement in its entirety and an agreement that is a mix of arrangements taken from more than one previously approved agreement. At a minimum, the FCC should require that carriers notify the state commission when it adopts a previously approved agreement in its entirety. In these situations, the state commission already has reviewed and approved the integration of the interconnection, service, or network element arrangements into a single agreement.

However, the FCC should not prevent state commissions from reviewing interconnection agreements that are the result of a requesting carrier's adoption of individual interconnection, service, or network element arrangements from more than one previously approved agreement. The new interconnection agreement would not be identical to a previously approved agreement. The WUTC believes that state commissions should review such agreements to pursuant to section 252(e)(2)(A) to ensure that the resulting agreement does not discriminate against any other carrier and is not inconsistent with the public interest, convenience and necessity. In addition, the state commissions' approval of such agreements will allow other carriers to adopt them, which achieves the purpose of section 252(i) of the Act.

The WUTC also is concerned that when an ILEC and a CLEC have an existing interconnection agreement, the CLEC might request terms and conditions from subsequently approved interconnections that are more advantageous. In these situations, the injection of a new term into the agreement is a modification of the original agreement and the state commission should review and approve the modified agreement under section 252(e)(2)(A) as set forth above.

2. MCI WorldCom's Request that the Effective Date of an Adopted Agreement Should Be the Date that Notice of Adoption is Provided to the ILEC

In general, the WUTC believes that the effective date of an interconnection agreement that adopts a previously approved agreement in its entirety should be date the CLEC provides notice of adoption to the ILEC. However, in situations where a requesting carrier is adopting various provisions from more than one agreement, or where the carrier is modifying an existing agreement by choosing an arrangement from a subsequent agreement, the effective date should

be the date the state commission approves the agreement.

3. MCI WorldCom's Request that ILECs Are Exempt from Section 252(i) Obligations Only As Set Forth in Rule 809(b)

The WUTC agrees that an ILEC is not obligated to make available to a requesting carrier a previously approved agreement only if it proves to the state commission that: 1) the costs of providing a particular interconnection, service, or unbundled element to the requesting carrier are greater than the costs of providing it to the original carrier; or 2) that the proposed adoption is technically infeasible, or, in the "pick and choose" context, that the carrier has failed to adopt legitimately related terms and conditions. 47 C.F.R. § 51.809(b).

4. MCI WorldCom's Request That the Effective Date of an Agreement Be Retroactive to the Notice of Adoption When an ILEC Unsuccessfully Challenges Adoption of an Agreement Pursuant to Rule 809(b)

The WUTC does not believe MCI Worldcom's request for a retroactive effective date is practical. We do not see how a retroactive effective date can be applied to an agreement that is a working document. Also, the WUTC is unclear how a retroactive effective date would benefit a CLEC. The WUTC believes the effective dates of agreements should be consistent with the dates outlined in our comments in Number 2 above.

5. MCI WorldCom's Request that an ILEC Challenge to an Adoption of an Agreement Pursuant to Rule 809(b) Should Be Decided Expeditiously

The WUTC has established an expedited process for the Commission to follow when an ILEC objects to a CLEC's adoption of a previously approved interconnection agreement. Under our process, the WUTC determines whether the ILEC has met the requirements for exemption set forth in Rule 809(b) within 80 days of the date the CLEC petitions the WUTC for enforcement of its Section 252(i) right to adopt the agreement.[2]

6. MCI WorldCom's Request That When an ILEC Challenges a CLEC's Adoption of Certain Terms of an Approved Agreement Under Rule 809(b), the ILEC Must Permit Adoption of the Remaining Terms of the Agreement Until the State Commission Rules on the ILEC's Challenge

The WUTC believes that the FCC should not make a declaratory ruling on this issue. Rather, these situations should be addressed by state commissions on a case-by-case basis. The challenged terms of an agreement (e.g. point of interconnection) may affect the ability of the

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[2]*See* Interpretive and Policy Statement, ¶ 27.

carriers to implement the remaining terms or arrangements of the agreement in a meaningful or practical way.

The WUTC's comments are consistent with the FCC's policy of leaving to state commissions, in the first instance, the details of the procedures for making arrangements in approved agreements available to requesting carriers on an expedited basis.[3] The WUTC's comments reflect our policy of providing parties with non-discriminatory, expedited means for taking advantage of available arrangements in any previously approved interconnection agreement.

III. Conclusion

In light of the complexity of interconnection issues under Section 252(i), as local competition emerges, we respectfully request the FCC to rule on MCI Worldcom's petition in a manner consistent with these comments.

DATED: March 30, 2000, at Olympia, Washington

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

Washington Utilities and Transportation Commission
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[3] *In the Matter of the Implementation of the Local Competition Rules of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 F.C.C.R. 15499, 16141, First Report and Order (August 8, 1996).